

**IN THE UNITED STATES BANKRUPTCY COURT
FOR DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
AMYRIS, INC., <i>et al.</i> ,	:	Case No. 23-11131 (TMH)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	:	Re: Docket No. 911
	:	
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**LIMITED OBJECTION AND RESERVATION OF
RIGHTS OF JVN ENTERTAINMENT, INC. AND
JONATHAN VAN NESS RELATING TO THE JVN CONSUMER BRAND SALE**

JVN Entertainment, Inc. and Jonathan Van Ness (collectively, “JVN”) object on a limited basis and reserve rights in connection with the sale of the JVN brand and related intellectual property and inventory (the “JVN Brand”) as proposed in the *Amended Notice of Filing of Successful Bidder and Auction Results For Sale of JVN Brand Assets* (the “Notice”) [Dkt. No. 911]. In support of its limited objection, JVN respectfully states as follows:

FACTUAL BACKGROUND

1. On August 9, 2023, and August 21, 2023, as applicable (the “Petition Date”), Amyris, Inc. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Upon information and belief, Debtors continue to manage their businesses and operate their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

¹A complete list of each Debtor in these Chapter 11 Cases may be obtained on the website of Debtors’ claims and noticing agent at <https://cases.stretto.com/Amyris>. The location of Debtor Amyris Inc.’s principal place of business and Debtors’ service address in these Chapter 11 Cases is 5885 Hollis Street, Suite 100, Emeryville, CA 94608.

2. Prior to the Petition Date, JVN, as licensor, and Debtor Amyris Clean Beauty, Inc. (“Amyris”), as licensee, were parties to a certain *Licensing and Endorsement Agreement* dated as of January 8, 2021 (as amended by that *First Amendment to the Licensing and Endorsement Agreement* effective September 1, 2021, the “Agreement”).² Pursuant to the Agreement, JVN licensed Jonathan Van Ness’ name and likeness to Amyris on certain terms and conditions. As set forth more fully in the Agreement, JVN endorsed the JVN Brand and related products in exchange for certain royalties and fees. Notwithstanding several outstanding defaults under the Agreement, JVN continues to perform under the Agreement in good faith.

3. Pursuant to the Agreement, JVN is entitled to royalties related specifically to the sale of JVN Brand products, including the current inventory of the JVN Brand as well as reimbursement of costs and other specified amounts. Amyris has been selling products post-petition, to which JVN is entitled to royalties and other amount and for which JVN has not been paid on a post-petition basis. The Agreement prohibits Debtors from assuming and assigning any of JVN’s rights or responsibilities without JVN’s prior written consent.

4. October 13, 2023, the Court entered an order (*A*) *Approving Procedures Related to the Assumption, Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases; and (B) Granting Related Relief* (the “Contract and Lease Procedures Order”) [Docket No. 526] authorizing Debtors to establish procedures related to the assumption, assumption and assignment, and/or transfer of executory contracts and unexpired leases in connection with a sale of Debtors’ assets.

² Upon information and belief, Debtors have a copy of the Agreement, which contains confidential and proprietary information. A copy of the Agreement is available upon reasonable written request by a proper party in interest and execution of any required confidentiality agreement.

5. On October 16, 2023, the Court entered the *Order (A) Approving Bid Procedures for the Sale of the Debtors' Brand Assets; (B) Approving Certain Bid Protections in Connection with the Debtors' Entry Into Any Potential Stalking Horse Agreements; (C) Scheduling the Auction and Sale Hearing; (D) Approving the Form and Manner of Notice Thereof; and (E) Granting Related Relief* [Dkt. No. 553] (the "Bid Procedures Order").

6. Pursuant to the Contract and Lease Procedures Order, On October 19, 2023, Debtors filed their *Notice of Potential Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases* [Dkt. No. 601] (the "Cure Notice"). Specific to JVN, Exhibit A to the Cure Notice lists, among other things, the Agreement with a cure amount of \$0, and the First Amendment to Agreement with a cure amount of \$270,935.22. *See* Cure Notice, Ex. A., p. 47, 48.

7. JVN's deadline to object to the Cure Notice was extended without date by agreement of Debtors. As set forth more fully in JVN's timely filed proof of claim, which was assigned Claim No. 664 by Debtors' claim agent, JVN asserts liquidated prepetition unsecured claims of no less than \$696,905.92 for royalties and accrued unpaid expenses arising under the Agreement, in addition to unliquidated amounts for fees, costs and damages. Additionally, JVN is owed administrative expense claims of at least \$131,124.00 for royalties due and services rendered under the Agreement on and after the Petition Date through the quarter ended September 30, 2023, plus additional post-petition administrative expense claims in unliquidated amounts for post-petition royalties and amounts due that continue to arise under the Agreement after September 30, 2023 (collectively, the "JVN Cure").

8. Pursuant to the Bid Procedures Order, Debtors conducted an auction for the JVN Brand, which, per the Notice, resulted in Windsong Global, LLC ("Windsong") as the successful bidder. Upon information and belief, while no schedules to the underlying assets purchase

agreement have been filed to date, Windsong intends to acquire the JVN brand inventory and certain Debtor-owned intellectual property.³ The Notice provides that Windsong does not intend to designate any executory contracts or unexpired leases.

9. JVN is currently in negotiations with Windsong regarding a new agreement with Windsong relating to a new agreement for the provision of JVN's continuing endorsement, development and support services of the JVN Brand. JVN is hopeful that those negotiations will soon result in agreement between the parties.

10. On December 15, 2023, Quiet Logistics, Inc. ("Quiet") filed its *Limited Objection to the JVN Consumer Brand Sale, Demand for Adequate Assurance and Reservation of Rights of Quiet Logistics, Inc.* [Dkt. No. 921]. As set forth more fully in its objection, Quiet asserts a lien in certain JVN Brand inventory located at Quiet's warehouses (the "Quiet JVN Inventory") and opposes the sale of this inventory to Windsong absent payment of over \$3 million. Quiet indicates that its objection will be resolved if Quiet is paid its claims or if the Quiet JVN Inventory is withdrawn from the sale to Windsong. Notwithstanding the proposed free and clear sale of the JVN Brand assets, Quiet reserves rights to foreclose upon and liquidate the Quiet JVN Inventory.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

11. Among the assets being sold with the JVN Brand to Windsong are JVN branded products. JVN's existing agreement with Amyris provides for royalty payments to JVN from Amyris based on the amount received by Amyris from the sale of such products. Therefore, absent an agreement with Windsong for the go-forward sales of JVN Brand inventory, JVN is entitled to receive royalty payments from Amyris on account of the sale or transfer of such products to

³ Debtors may only sell that certain "Core IP" as defined in that certain *Settlement Agreement* dated November 28, 2023 by and among Debtors and JVN. See Ex. B to Dkt. No 789, as approved by Order of the Bankruptcy Court dated December 7, 2023, Dkt.. No. 845.

Windsong or Quiet. Should the sale to Windsong be approved, and should Windsong and JVN fail to come to an agreement relating to the future sales of the products, JVN demands adequate assurance from Debtors and reserves the right to assert an administrative expense claim against Amyris for the value of the products sold or otherwise transferred relating to the sale if those amounts are not paid in the ordinary course.

12. Since the Petition Date, JVN has continued to perform under the Agreement. Payment for post-petition royalties, costs and fees continues to accrue. Royalties are reported and paid quarterly and depend on the amount of sales Amyris realizes during the quarter. Consistent with past practice, in early 2024, JVN expects to receive a report of sales activity from Debtors relating to the fourth quarter of 2023 followed by prompt payment. JVN thus reserves the right to assert an administrative claim to the extent any post-petition royalties and services are not paid in the ordinary course.

13. Alternatively, in the unlikely event that the Agreement is proposed to be assumed and assigned, all post-petition amounts under the Agreement must be paid in addition to the JVN Cure at the closing of the sale, and additionally JVN must consent to such proposed assumption and assignment.

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CONCLUSION

WHEREFORE, JVN respectfully requests that entry of any order approving the proposed sale be consistent with the above and grant JVN such additional relief as the Court deems proper and just.

BLANK ROME LLP

Dated: December 18, 2023

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